

ORIGINAL

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6 Attorneys for Defendant  
7 SYNGENTA BIOTECHNOLOGY, INC. **E-FILING**

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 *[Handwritten signature]*  
12 GREG LeFEBVRE and DANISCO US  
13 INC.,

14 Plaintiff,

15 v.

16 SYNGENTA BIOTECHNOLOGY, INC.,

17 Defendant.

Case No. **008 02732**

**DEFENDANT SYNGENTA  
BIOTECHNOLOGY, INC.'S NOTICE OF  
REMOVAL UNDER 28 U.S.C. § 1441  
(DIVERSITY); CERTIFICATION OF  
INTERESTED ENTITIES OR PERSONS**

18 **NOTICE OF REMOVAL**

19  
20 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN  
21 DISTRICT OF CALIFORNIA:

22 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332 and 1441, Defendant  
23 Syngenta Biotechnology, Inc. ("Syngenta") hereby removes the above-entitled action from the  
24 Superior Court of the State of California, County of Santa Clara, to the United States District  
25 Court for the Northern District of California, San Jose Division, and states as follows:

26 1. On May 1, 2008, plaintiffs Greg LeFebvre ("LeFebvre") and Danisco US Inc.  
27 ("Danisco"), collectively "Plaintiffs," filed an action entitled *Greg LeFebvre and Danisco US Inc.*

28 ///

**FILED**

2008 MAY 30 P 4 22

RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

*Free Rad*  
*NP*  
*(1)*

**ADR**

1 *v. Syngenta Biotechnology, Inc.*, Case No. 108-CV-111703 in the Superior Court of California,  
2 County of Santa Clara.

3 2. The first date on which Syngenta received a copy of plaintiff's complaint was May  
4 2, 2008, when Syngenta was served with a copy of the complaint along with a Summons, a Civil  
5 Case Cover Sheet, a Civil Lawsuit Notice, and an Alternative Dispute Resolution Information  
6 Sheet. Complete copies of the complaint and associated papers, as served on Syngenta, are  
7 attached as **Exhibit A**.

8 3. Pursuant to 28 U.S.C. §1446(b), this Notice of Removal is timely filed within  
9 thirty days of receipt by Syngenta, through service or otherwise, of a copy of the initial pleading  
10 setting forth the claim for relief upon which the action is based.

11 4. On May 28, 2008, Syngenta filed its answer to the complaint in the Superior Court  
12 of California, County of Santa Clara, a complete copy of which is attached as **Exhibit B**.

13 5. The papers contained in attached Exhibits A and B are the only papers filed in the  
14 state court action as of this date.

### 15 JURISDICTION

16 6. Pursuant to 28 U.S.C. § 1332 and Civil Local Rule 3-5(a), this Court has  
17 jurisdiction over this action because there is complete diversity amongst the parties and the  
18 amount in controversy exceeds \$75,000.

### 19 I. COMPLETE DIVERSITY

20 7. Paragraph 1 of the Complaint alleges that LeFebvre resides in Mountain View  
21 California.

22 8. Paragraph 2 of the Complaint alleges that Danisco is incorporated under the laws  
23 of the State of Delaware and has an office in Palo Alto, California. Danisco is still incorporated  
24 under the laws of the State of Delaware. Danisco's principal place of business at the time the  
25 Complaint was filed and at present is in Palo Alto, California.

26 9. At the time the Complaint was filed Syngenta was incorporated under the laws of  
27 the State of Delaware and maintained its principal place of business in Research Triangle Park,

28 ///

1 North Carolina. Syngenta's state of incorporation and principal place of business remain  
 2 unchanged. Syngenta is not a citizen of the State of California.

3 10. Plaintiffs bring their declaratory relief action pursuant to California Code of Civil  
 4 Procedure section 1060 asking the Court to declare unenforceable an Agreement Concerning  
 5 Confidentiality, Proprietary Rights and Restrictive Covenants (the "Agreement") entered into  
 6 between LeFebvre and Syngenta. Section 1060 provides that "[a]ny person interested under a . . .  
 7 contract. . ." may seek a declaration of their rights and duties.

8 11. Danisco does not have standing to pursue this declaratory judgment action against  
 9 Syngenta because Danisco is not a "person interested" in the Agreement.

10 12. Danisco is not a party to the Agreement. Therefore, because Danisco has no legal  
 11 interest in the enforcement of the contract it does not have standing. *See, Infinet Marketing*  
 12 *Services, Inc. v. American Motorist Insurance Co.*, 150 Cal. App. 4th 168, 181 (Cal. Ct. App.  
 13 2007) (even though plaintiff would tangentially benefit from enforcement of contract, court held  
 14 no standing under Cal. Civ. P. section 1060 because plaintiff was neither a party to the contract  
 15 nor an intended beneficiary); *see also Douglas v. Don King Productions, Inc.*, 736 F. Supp. 223  
 16 (D. Nev. 1990) ("Generally, a plaintiff can assert only his own legal interests and not those of  
 17 third parties.").

18 13. Moreover, the Complaint contains no allegation that Syngenta threatened Danisco  
 19 with a lawsuit. Indeed, Syngenta has not. While Syngenta has filed a claim against LeFebvre in  
 20 North Carolina, Syngenta has not similarly filed any claim against Danisco. Therefore, Danisco  
 21 does not have standing to seek declaratory relief by virtue of any threat of a lawsuit. *See, De La*  
 22 *Hoya v. Top Rank, Inc.*, Case No. CV 00-9230-WMB, CV 00-10450-WMB, 2001 U.S. Dist.  
 23 LEXIS 25816, at \*49 (C.D. Cal. 2001) ("The declaratory judgment procedure was expressly  
 24 intended to confer standing upon persons threatened with suit.").

25 14. Danisco is not an "interested party" because it neither has legal rights in the contract  
 26 nor has been threatened with any lawsuit. Thus, the Court may ignore Danisco's presence for the

27 ///

28 ///

1 purpose of determining diversity.<sup>1</sup> See *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067-1068  
 2 (9th Cir. 2001) (explaining that an exception to the requirement of complete diversity is “fraudulent  
 3 joinder”; fraudulent joinder was shown where plaintiff failed to state a cause of action).

4 15. Syngenta and LeFebvre are in complete diversity.

## 5 **II. AMOUNT IN CONTROVERSY**

6 16. At the inception of his employment with Syngenta, LeFebvre entered into the  
 7 Agreement with Syngenta. Because of LeFebvre’s nearly unfettered access to Syngenta’s most  
 8 valuable information and trade secrets, enforcement of the Agreement is necessary to protect the  
 9 commercial value of that information and those trade secrets. Plaintiffs’ Complaint raises the  
 10 issue of the enforceability of the Agreement. This dispute over the enforceability of the  
 11 Agreement involves an amount in controversy in excess of \$75,000.

12 17. Syngenta has developed proprietary research, methods, and procedures related to  
 13 plant science technology that are technical in nature, derive independent commercial value from  
 14 not being known or readily ascertainable, and are subject to reasonable means to maintain their  
 15 secrecy. As relevant to this matter, this confidential, proprietary and trade secret information  
 16 includes, but is not necessarily limited to, the following (hereinafter collectively and separately  
 17 referred to as the “Trade Secret Information”):

- 18 a. Confidential, proprietary, and trade secret information concerning  
 19 Syngenta’s Bioprocessing business, which relates to the processing/  
 20 conversion of feedstock (such as corn, milo, wheat, or barley) into valuable  
 21 components and compounds.
- 22 b. Confidential, proprietary, and trade secret information concerning  
 23 Syngenta’s Renewable Fuels (“biofuels”) business, which relates to the  
 24 conversion of feedstock to ethanol, which is blended with gasoline. This  
 25 technology represents a substantial investment of resources by Syngenta,  
 26

27 <sup>1</sup> After removal, Syngenta plans to file a motion to dismiss Danisco and stay or transfer the case.  
 28 Syngenta will confer with Plaintiffs’ counsel with respect to setting a briefing schedule.

1 and is considered one of Syngenta's most significant business growth  
2 opportunities.

3 c. Confidential, proprietary, and trade secret information concerning  
4 Syngenta's enzyme business, which relates to commercialization of enzymes  
5 (biological catalysts) which are designed to be used for animal nutrition and  
6 for processing feedstock to value added components. By way of illustration,  
7 Syngenta is presently developing proprietary enzyme technology and  
8 systems to convert plant waste and pre-treated cellulosic biomass into  
9 biofuels.

10 d. Confidential, proprietary, and trade secret information concerning  
11 Syngenta's efforts to research, develop, commercialize, and market  
12 Syngenta's most advanced product, Corn Amylase. Corn Amylase is the  
13 first enzyme to be expressed in corn that is targeted at facilitating the  
14 conversion of corn into bioethanol, a renewable fuel source for cars and  
15 other vehicles. Corn Amylase is in the last stages of development and is  
16 expected to be brought to market in the near future. Corn Amylase promises  
17 to simplify production and raise fuel yield per acre, and provides a  
18 significant performance advantage over conventional industry technology.  
19 Indeed, it has been publicly reported that Syngenta's work in this area has  
20 the potential to reduce the costs of ethanol production up to ten percent-an  
21 extraordinary competitive advantage given the current energy markets.

22 e. Confidential, proprietary, and trade secret information concerning  
23 Syngenta's strategic plans and the support functions necessary to bring the  
24 foregoing technology forward, including finance, regulatory, business  
25 analysis, supply chain, account management, communications, marketing  
26 and advertising.

27 18. LeFebvre's key position as Syngenta's Global Business Director, Bioprocessing  
28 required him to have a comprehensive and detailed knowledge of Syngenta's operations,

1 capabilities, methodological approaches, functions, and other Syngenta proprietary information,  
 2 know-how, strategic plans, and the Trade Secret Information. LeFebvre gained a comprehensive  
 3 and detailed knowledge of Syngenta's proprietary and confidential business plans and strategies.  
 4 Indeed, LeFebvre held the key position in Syngenta's bioprocessing and biofuels business, and  
 5 had virtually unlimited access and influence of the course of the bioprocessing program and the  
 6 Trade Secret Information.

7 19. To the extent that the Agreement is declared unenforceable and LeFebvre is  
 8 permitted to take his comprehensive knowledge of Syngenta's Trade Secret Information to  
 9 Danisco, Syngenta stands to lose in excess of \$75,000. The Trade Secret Information which  
 10 LeFebvre has knowledge of cost Syngenta in excess of \$75,000 to develop. Additionally,  
 11 Danisco's receipt of this information could cost Syngenta lost sales and other economic injury in  
 12 excess of \$75,000.

13 20. LeFebvre was one of only a handful of employees at Syngenta who was offered a  
 14 non-compete agreement with a specifically negotiated "garden leave" provision. LeFebvre and  
 15 Syngenta agreed that Syngenta would provide him compensation during the period of the  
 16 noncompete. Specifically, the Agreement provides, in relevant part, as follows:

17 In partial consideration for Employee's agreement to not compete  
 18 with Syngenta in this manner, within ten (10) days of the end of:  
 19 (a) each of the first 11 months of Employee's non-compete period  
 20 Syngenta will pay to Employee an amount equal to ½ of  
 21 employee's monthly base salary, and (b) the end of the 12<sup>th</sup> month  
 of such non-compete period, Employee shall be paid an amount  
 equal to 25% of Employee's base annual salary, in each case as  
 such salary existed on the date of termination.

22 21. As Syngenta's Global Business Director, Bioprocessing, LeFebvre earned in excess  
 23 of \$200,000 per year. The payment contemplated under the "garden leave" provision is in excess  
 24 of \$75,000.

25 22. This action is therefore a civil action over which this Court has original  
 26 jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court by  
 27 defendants pursuant to the provisions of 28 U.S.C. § 1441(b).

28 ///

INTRADISTRICT ASSIGNMENT

23. Pursuant to Civil Local Rule 3-5(b), assignment of this action to the San Jose Division of this Court is proper because, under Civil Local Rules 3-2(c) and (e), this action arises in the county of Santa Clara because Plaintiffs originally filed this action in Santa Clara County Superior Court.

24. Syngenta has complied with all conditions precedent to removal.

25. Promptly upon filing this Notice of Removal with this Court, Syngenta shall provide written notice to Plaintiffs (through their counsel) and to the Santa Clara County Superior Court, as required under 28 U.S.C. § 1446(d). A copy of said notice is attached as **Exhibit C**.

26. WHEREFORE, this action is properly removed to this Court pursuant to 28 U.S.C. §§ 1332 and 1441(b).

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW



**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

Pursuant to Civil Local Rule 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: May 30, 2008

FENWICK & WEST LLP

By: \_\_\_\_\_

  
Kimberly I. Culp

Attorneys for Defendant  
SYNGENTA BIOTECHNOLOGY, INC.

1285470

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW



**CT CORPORATION**  
A WoltersKluwer Company

**Service of Process  
Transmittal**

05/05/2008

CT Log Number 513388988



**TO:** Daniel Tangeman, Esquire  
Syngenta Animal Nutrition, Inc.  
3054 East Cornwallis Road  
Research Triangle Park, NC 27709

**RE: Process Served in California**

**FOR:** Syngenta Biotechnology, Inc. (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Greg LeFebvre and Danisco Us Inc., Pltfs. vs. Syngenta Biotechnology, Inc., Dft.  
**DOCUMENT(S) SERVED:** Summons, Complaint, Cover Sheet, Notice, Attachment(s)  
**COURT/AGENCY:** Santa Clara County- San Jose, Superior Court, CA  
Case # 108CV111703  
**NATURE OF ACTION:** Seeking declaratory relief that the agreement is viod and unenforceable in its entirety  
because it is permeated with illegality  
**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Los Angeles, CA  
**DATE AND HOUR OF SERVICE:** By Process Server on 05/02/2008 at 14:35  
**APPEARANCE OR ANSWER DUE:** Within 30 days after service - file written response // 9/23/2008 at 1:30 p.m. - Case  
Management Conference  
**ATTORNEY(S) / SENDER(S):** James W. Morando  
Farella Braun + Martel LLP  
235 Montgomery Street  
17th Floor  
San Francisco, CA 94104  
415-954-4400  
**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex Standard Overnight , 790007479419  
**SIGNED:** C T Corporation System  
**PER:** Nancy Flores  
**ADDRESS:** 818 West Seventh Street  
Los Angeles, CA 90017  
**TELEPHONE:** 213-337-4615

Page 1 of 1 / TC

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

5/16/08 → 7:35P

**SUMMONS  
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**  
SYNGENTA BIOTECHNOLOGY, INC.**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
GREG LeFEBVRE and DANISCO US INC.FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)ENDORSED  
FILED

MAY -1 08

KIRI TORRE  
CHIEF EXEC. OFFICER/CLERK  
SUPERIOR COURT OF CA  
COUNTY OF SANTA CLARA  
DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):  
Superior Court of California  
Santa Clara County  
191 North First Street  
San Jose, CA 95113

CASE NUMBER  
(Número del Caso):

108CV111703

BY FAX

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
James W. Morando (SBN 087896) (415) 954-4400 (415) 954-4480  
Farella Braun + Martel LLP  
235 Montgomery Street, 17th Floor  
San Francisco, CA 94104  
Kiri Torre  
J. Cao-Nguyen

DATE: MAY -1 2008 Chief Executive Officer/Clerk Clerk, by Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):  
3. ☒ on behalf of (specify): Syngenta Biotechnology, Inc.

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

James W. Morando (State Bar No. 087896)  
Laura C. Roche (State Bar No. 174596)  
Farella Braun & Martel LLP  
235 Montgomery Street, 17th Floor  
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Jeffrey S. Boxer (Appearing *Pro Hac Vice*)  
Emily Milligan (Appearing *Pro Hac Vice*)  
Carter Ledyard & Milburn LLP  
Two Wall Street  
New York, New York 10005  
Telephone: (212) 732-3200

Attorneys for Plaintiffs  
Greg LeFebvre and Danisco US Inc.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

GREG LeFEBVRE and DANISCO US  
INC.,

Plaintiffs,

vs.

SYNGENTA BIOTECHNOLOGY, INC.,

Defendant.

Case No. **108CV111703**

COMPLAINT FOR DECLARATORY RELIEF  
(C.C.P. § 1060)

**BY FAX**

**COMPLAINT**

The Plaintiffs, Greg LeFebvre and Danisco US Inc. (collectively "Plaintiffs"), by counsel, hereby petition this Court for declaratory and other relief against the Defendant Syngenta Biotechnology, Inc. ("Syngenta"). In support of said request for relief, Plaintiffs allege as follows:

**THE PARTIES**

1. Plaintiff Greg LeFebvre ("Mr. LeFebvre") is an individual who resides in Mountain View, California.
2. Plaintiff Danisco US Inc. ("Danisco") is incorporated under the laws of the State

1 of Delaware and has an office located in Palo Alto, California. Danisco is a biotechnology  
2 company that develops and produces enzymes and bio-based products for various several  
3 industries

4 3. Defendant Syngenta is incorporated under the laws of the State of Delaware and its  
5 principal office is located in Research Triangle Park, North Carolina. Upon information and  
6 belief, Syngenta is a biotechnology company that focuses primarily on creating products for use  
7 in agriculture.

#### 8 JURISDICTION AND VENUE

9 4. This Court has jurisdiction to hear the claims alleged in this Complaint and is a  
10 court of competent jurisdiction to grant the relief requested.

11 5. This Court has jurisdiction over Syngenta because the claims asserted herein  
12 against Syngenta arise from acts or omissions by Syngenta in California or acts or omissions by  
13 Syngenta outside California the effects of which will be felt in California. Syngenta is qualified  
14 to transact business in California and has appointed an agent for service of process in California.

15 6. Venue is proper in this Court because the causes of action alleged in this  
16 Complaint, and the liability arising therefrom, arose in the County of Santa Clara.

#### 17 GENERAL ALLEGATIONS

18 7. From August 2006 until April 2008, Mr. LeFebvre was employed by Syngenta as  
19 Business Director, Bioprocessing at Syngenta's offices in Research Triangle Park, North  
20 Carolina.

21 8. While employed at Syngenta, Mr. LeFebvre was responsible for commercializing  
22 and marketing products for use in the biofuels industry.

23 9. At the time Mr. LeFebvre began employment with Syngenta he was required to  
24 sign an Agreement Concerning Confidentiality, Proprietary Rights and Restrictive Covenants (the  
25 "Agreement"), an unsigned copy of which is attached as Exhibit A.

26 10. Section 6(d) of the Agreement contains a broadly drawn restrictive covenant (the  
27 "Restrictive Covenant") which prohibits Mr. LeFebvre from working for or with any company  
28 engaged in any aspect of the "manufacture and/or sale of enzyme products for bioprocessing" in

1 any area of "the United States of America, Brazil, Mexico, China, Canada, France, England,  
2 Germany" for a period of 12 months after the termination of his employment with Syngenta. The  
3 full text of the Restrictive Covenant is as follows:

4 6.d. Employee acknowledges and agrees that the duties and responsibilities to be  
5 performed by Employee for the Company are of a special and unusual character  
6 which have a unique value to the Company, the loss of which cannot be  
7 adequately compensated by damages in any action in law. As a consequence of  
8 Employee's unique position as the Global Business Director, Bioprocessing,  
9 Employee also acknowledges and agrees that Employee will have broad access to  
10 Confidential Information, that Confidential Information will in fact be developed  
11 by Employee in the course of performing duties and responsibilities for the  
12 Company, and that the Confidential Information furnishes a competitive  
13 advantage in many situations and that employment in the Marketing and/or Sales  
14 Business Development functions (the "Restricted Department") of another Person  
15 engaged in manufacture and/or sale of enzyme products for bioprocessing (the  
16 "Business") in the following countries: the United States of America, Brazil,  
17 Mexico, China, Canada, France, England, Germany (hereinafter defined as the  
18 "Major Enzymes Markets") would by virtue of the nature of such employment  
19 inevitably lead Employee to rely on or utilize such Confidential Information.  
20 Thus, Employee acknowledges and agrees that it is both reasonable and necessary  
21 for the covenants in this Section to apply to Employee's activities throughout the  
22 Major Enzymes Markets. In recognition of the special and unusual character of  
23 the duties and responsibilities of Employee when employed with the Company  
24 and as a material inducement to the Company (to continue) to employ Employee  
25 in this special and unique capacity, Employee covenants and agrees that upon  
26 termination of Employee's employment for any reason and for twelve (12)  
27 months thereafter, Employee shall not, on Employee's own account or as an  
28 employee, associate, consultant, partner, agent, principal, contractor, owner,  
officer, director, member, manager or stockholder of any other Person who is  
engaged in the Business (collectively, the "Restricted Persons"), directly or  
indirectly, alone, for, or in combination with any one or more Restricted Persons,  
in one or a series of transactions: (a) serve in any capacity in the Restricted  
Department of any Person who is engaged in the Business in any state in the  
Major Enzymes Markets; (b) provide consultative services to the Restricted  
Department of any Person who is engaged in the Business in any country within  
the Major Enzymes Markets; (c) call upon any of the depositors, customers or  
clients of the Company (or any subsidiary, affiliate, or parent company of  
Company who is also engaged in the Business) who were such at any time during  
the twelve-month period ending on the termination of Employee's employment  
with the Company, whose needs Employee gained information about during his  
employment with the Company for the purpose of soliciting or providing any  
product or service similar to that provided by the Company or any subsidiary,  
affiliate, or parent company of the Company; (d) solicit, divert, or take away, or  
attempt to solicit, divert or take away any of the customers or clients of the  
Company (or any subsidiary, affiliate, or parent company of the Company who is  
also engaged in the Business) who were such at any time during the twelve-month  
period ending on the termination of Employee's employment with the Company,  
whose needs Employee gained information about during his employment with the  
Company; or (e) induce or attempt to induce any employee of the Company or  
any subsidiary, affiliate, or parent company of Company to terminate his  
employment with the Company or any subsidiary, affiliate, or parent company of  
Company or to accept employment with any Person (whether or not such



1 employee was subject to a covenant not to compete with the Company). For  
2 purposes of this paragraph, "Person" shall mean any individual, person,  
3 partnership, limited liability company, joint venture, corporation, company, firm,  
4 group or other entity.

5 11. Mr. LeFebvre has been offered and has accepted employment with Danisco's  
6 Genencor division Grain Processing business unit based in Palo Alto, California as Danisco's  
7 Genencor Division Global Director of Marketing, Grain Processing. As part of accepting this  
8 employment with Danisco Mr. LeFebvre has procured a residence in California where he will be  
9 based and work from Danisco's office in Palo Alto, California.

10 12. Danisco has expressly directed Mr. LeFebvre not to retain, disclose or use any  
11 Syngenta trade secrets in connection with his new employment or in performing his work for  
12 Danisco. Mr. LeFebvre has complied with this directive and has not retained, disclosed or used  
13 any Syngenta trade secrets since the termination of his employment with Syngenta.

14 13. In the course of performing his job duties at Danisco, Mr. LeFebvre does not  
15 intend to use or disclose any Syngenta trade secrets.

16 14. Syngenta has nonetheless threatened to enforce the Restrictive Covenant against  
17 Mr. LeFebvre and, upon information and belief, plans to try to prevent Mr. LeFebvre from being  
18 employed by Danisco in the position he accepted in Palo Alto, California. When Mr. LeFebvre  
19 submitted his resignation letter to Syngenta, he was informed Syngenta would immediately take  
20 legal action to enforce the Restrictive Covenant against him.

21 **FIRST CAUSE OF ACTION**  
22 **DECLARATORY JUDGMENT**

23 15. Plaintiffs reassert, re-allege, and incorporate by reference herein all facts and  
24 allegations set forth in Paragraphs 1 through 14 above.

25 16. An actual controversy has arisen and exists between Mr. LeFebvre and Danisco on  
26 the one hand and Syngenta on the other hand concerning whether the Restrictive Covenant  
27 contained in Section 6(d) of the Agreement is enforceable and whether it prevents Mr. LeFebvre  
28 from being employed by Danisco's Genencor division Grain Processing Business Unit in Palo,  
Alto, California.





1  
2 Dated: May 1, 2008

FARELLA BRAUN & MARTEL LLP  
CARTER LEDYARD & MILBURN LLP

3  
4  
5 By: Laura C. Roche  
Laura C. Roche

6 Attorneys for Plaintiffs  
7 Greg LeFebvre and Danisco US Inc.  
8  
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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James W. Morando (SBN 087896) Laura C. Roche (SBN 174596) Farella Braun + Martel LLP 235 Montgomery Street, 17th Floor San Francisco, CA 94104 TELEPHONE NO.: (415) 954-4400 FAX NO.: (415) 954-4480 ATTORNEY FOR (Name): GREG LEFEBVRE and DANISCO US INC.		FOR COURT USE ONLY ENDORSED FILED MAY -1 08 KIRI TORRE CHIEF EXEC. OFFICER/Clerk SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA J. Caplan FIDELITY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:		
CASE NAME: LEFEBVRE and DANISCO US INC. v. SYNGENTA BIOTECHNOLOGY, INC.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: <b>108 CV 111703</b> JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other P/IPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/WD (23) <b>Non-P/IPD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/IPD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (08) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): One

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

**BY FAX**

Date: May 1, 2008

Laura C. Roche (SBN 174596)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

**CIVIL LAWSUIT NOTICE**

Superior Court of California, County of Santa Clara  
191 N. First St., San Jose, CA 95113

CASE NUMBER:

ATTACHMENT CV-5012  
**108 CV 111708****READ THIS ENTIRE FORM**

**PLAINTIFFS** (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

**DEFENDANTS** (The person(s) being sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, in the Clerk's Office of the Court, within 30 days of the date the *Summons* and *Complaint* were served on you;
2. You must send a copy of your written response to the plaintiff; and
3. You must attend the first Case Management Conference.

**Warning:** If you do not do these three things, you may automatically lose this case.

**RULES AND FORMS:** You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) and [www.courtinfo.ca.gov/rules](http://www.courtinfo.ca.gov/rules)
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>
- Rose Printing: 408-293-8177 or [becky@rose-printing.com](mailto:becky@rose-printing.com) (there is a charge for forms)

For other local legal information, visit the Court's Self-Service website [www.sccselfservice.org](http://www.sccselfservice.org) and select "Civil."

**CASE MANAGEMENT CONFERENCE (CMC):** You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

*You or your attorney must appear at the CMC. You may ask to appear by telephone -- see Local Civil Rule 8.*

Your Case Management Judge is: James Emerson Department: 19

The 1<sup>st</sup> CMC is scheduled for: (Completed by Clerk of Court)

Date: SEP 23 2008 Time: 1:30 PM in Department 19

The next CMC is scheduled for: (Completed by party if the 1<sup>st</sup> CMC was continued or has passed)

Date: \_\_\_\_\_ Time: \_\_\_\_\_ in Department \_\_\_\_\_

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at [www.sccsuperiorcourt.org/civil/ADR/](http://www.sccsuperiorcourt.org/civil/ADR/) or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

**WARNING:** Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

---

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA**  
**ALTERNATIVE DISPUTE RESOLUTION**  
**INFORMATION SHEET / CIVIL DIVISION**

---

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

***What is ADR?***

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

***What are the advantages of choosing ADR instead of litigation?***

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

***What are the main forms of ADR offered by the Court?***

- < Mediation is an informal, confidential process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator then helps the parties to explore options and arrive at a mutually acceptable resolution of the dispute. The mediator does not decide the dispute. The parties do.
- < Mediation may be appropriate when:
  - < The parties want a non-adversary procedure
  - < The parties have a continuing business or personal relationship
  - < Communication problems are interfering with a resolution
  - < There is an emotional element involved
  - < The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

- < Arbitration is a normally informal process in which the neutral (the arbitrator) decides the dispute after hearing the evidence and arguments of the parties. The parties can agree to binding or non-binding arbitration. Binding arbitration is designed to give the parties a resolution of their dispute when they cannot agree by themselves or with a mediator. If the arbitration is non-binding, any party can reject the arbitrator's decision and request a trial.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
  - < Only monetary damages are sought
  - < Witness testimony, under oath, is desired
  - < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)
- < Neutral evaluation is an informal process in which a neutral party (the evaluator) reviews the case with counsel and gives a non-binding assessment of the strengths and weaknesses on each side and the likely outcome. The neutral can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
  - < The case involves a technical issue in which the evaluator has expertise
  - < Case planning assistance would be helpful and would save legal fees and costs
  - < The parties are interested in an injunction, consent decree, or other form of equitable relief
- < Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

- < Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

#### *What kind of disputes can be resolved by ADR?*

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; and sports, among other matters.

#### *Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, for information about ADR procedures, or for other questions about ADR?*

##### *Contact:*

Santa Clara County Superior Court  
ADR Administrator  
408-882-2530

Santa Clara County DRPA Coordinator  
408-792-2704

ENDORSED FILED

08 MAY 28 PM 2:00

KIRI TORRE  
CHIEF EXEC. OFFICER/CLERK  
SUPERIOR COURT OF CA.  
COUNTY OF SANTA CLARA  
BY Torre DEPUTY

1 RODGER R. COLE (CSB NO. 178865)  
2 KIMBERLY I. CULP (CSB NO. 238839)  
3 FENWICK & WEST LLP  
4 Silicon Valley Center  
5 801 California Street  
6 Mountain View, CA 94041  
7 Telephone: (650) 988-8500  
8 Facsimile: (650) 938-5200

9 Attorneys for Defendant  
10 SYNGENTA BIOTECHNOLOGY, INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SANTA CLARA

13 GREG LeFEBVRE and DANISCO US INC.,

14 Plaintiff,

15 v.

16 SYNGENTA BIOTECHNOLOGY, INC.,

17 Defendant.

Case No. 108-CV-111703

**DEFENDANT SYNGENTA  
BIOTECHNOLOGY, INC.'S ANSWER  
TO PLAINTIFFS' COMPLAINT FOR  
DECLARATORY RELIEF**

18 Defendant Syngenta Biotechnology, Inc. ("Defendant") hereby answers the unverified  
19 Complaint ("Complaint") of Plaintiff Greg LeFebvre ("LeFebvre") and Danisco US Inc.  
20 ("Danisco"), collectively "Plaintiffs," as follows:

**GENERAL DENIAL**

21 Pursuant to California Code of Civil Procedure Sections 431.30(b)(1) and (d), Defendant  
22 generally denies each and every material allegation of Plaintiffs' Complaint. Defendant further  
23 denies that Plaintiffs have been injured by any act or omission of Defendant.

**AFFIRMATIVE DEFENSES**

24 Pursuant to California Code of Civil Procedure Section 431.30(b)(2), as separate and  
25 distinct affirmative defenses to all claims and causes of action alleged in the Complaint,  
26 Defendant alleges as follows:  
27

28 ///

COPY

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW



**FIRST AFFIRMATIVE DEFENSE****(Failure to State a Claim)**

As an affirmative defense to the Complaint, and the purported cause of action, Plaintiffs fail to state facts sufficient to constitute a cause of action against Defendant.

**SECOND AFFIRMATIVE DEFENSE****(Waiver)**

As an affirmative defense to the Complaint, and the purported cause of action, Plaintiffs, by their own conduct, have waived any of the claims upon which they seek relief.

**THIRD AFFIRMATIVE DEFENSE****(Estoppel)**

As an affirmative defense to the Complaint, and the purported cause of action, Plaintiffs, by their own conduct, are estopped from asserting any of the claims upon which they seek relief.

**FOURTH AFFIRMATIVE DEFENSE****(Unclean Hands)**

As an affirmative defense to the Complaint, and the purported cause of action, Plaintiffs, by their own acts and omissions, are barred from any recovery in this action by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE****(Consent)**

As an affirmative defense to the Complaint, and the purported cause of action, LeFebvre, by his own acts and omissions, is barred from any recovery in this action by the doctrine of consent.

**SIXTH AFFIRMATIVE DEFENSE****(Acquiescence)**

As an affirmative defense to the Complaint, and the purported cause of action, LeFebvre, by his own acts and omissions, is barred from any recovery in this action by the doctrine of acquiescence.

///



**SEVENTH AFFIRMATIVE DEFENSE**  
**(Laches)**

As an affirmative defense to the Complaint, and the purported cause of action, LeFebvre, by his own acts and omissions, is barred from any recovery in this action by the doctrine of laches.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(Forum Non Conveniens)**

As an affirmative defense to the Complaint, and the purported cause of action, Plaintiffs are barred from any recovery in this action by the doctrine of forum non conveniens.

**RESERVATION OF RIGHT TO ASSERT ADDITIONAL AFFIRMATIVE DEFENSES**

Plaintiff has failed to set forth the allegations of the Complaint with sufficient particularity to provide Defendant with a sufficient basis to form a belief as to whether it may have additional, as yet unstated, affirmative defenses. Defendant reserves the right to assert additional affirmative defenses in the event that discovery or investigation reveals that they would be appropriate.

**PRAYER FOR RELIEF**

**WHEREFORE**, Defendant prays as follows:

1. That the Complaint be dismissed in its entirety with prejudice, and Plaintiffs take nothing by this action;
2. That judgment be entered in favor of Defendant and against Plaintiffs;
3. That Defendant be allowed to recover its costs and reasonable attorneys' fees incurred in defending this action; and
4. For such other and further relief as the Court deems just and proper.

DATED: May 28, 2008

FENWICK & WEST LLP

By: 

Rodger R. Cole

Attorneys for Defendant  
SYNGENTA BIOTECHNOLOGY, INC.

1285786

**CERTIFICATE OF SERVICE****ENDORSED FILED**

The undersigned declares that:

**08 MAY 28 PM 2:00**

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to this action. My business address is 801 California Street, Mountain View, CA 94041.

CHIEF EXEC. OFFICER/CLERK  
COUNTY OF SANTA CLARA  
BY G. Duarte DEPUTY

On the date set forth below, I served the attached DEFENDANT SYNGENTA BIOTECHNOLOGY, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF on the party in the subject action by placing a true copy thereof as indicated below, addressed as follows:

James W. Morando, Esq.  
Laura C. Roche, Esq.  
Farella Braun & Martel LLP  
235 Montgomery Street, 17th Floor  
San Francisco, CA 94104

Jeffrey S. Boxer, Esq.  
Emily Milligan, Esq.  
Carter Ledyard & Milburn LLP  
Two Wall Street  
New York, NY 10005

☒ **U.S. MAIL:** I am familiar with our business practices for collecting and processing of mail for the United States Postal Service. Mail placed by me within the office for collection for the United States Postal Service would normally be deposited with the United States Postal Services that day in the ordinary course of business. The envelope(s) bearing the address(es) above was sealed and placed for collection and mailing on the date below following our ordinary business practices.

☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand on the office(s) of the addressee(s).

☐ **BY FEDERAL EXPRESS:** I caused such envelope(s) to be delivered to Federal Express for overnight courier service to the office(s) of the addressee(s).

☐ **BY ELECTRONIC MAIL:** I caused such document(s) to be delivered by electronic mail to the addressee(s).

☐ **BY FACSIMILE:** I caused a copy of such document(s) to be sent via facsimile transmission to the office(s) of the party(s) stated above and was transmitted without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 28, 2008 at Mountain View, California.

  
Marti Guidoux

1285786

1 RODGER R. COLE (CSB NO. 178865)  
2 KIMBERLY I. CULP (CSB NO. 238839)  
3 FENWICK & WEST LLP  
4 Silicon Valley Center  
5 801 California Street  
6 Mountain View, CA 94041  
7 Telephone: (650) 988-8500  
8 Facsimile: (650) 938-5200

9 Attorneys for Defendant  
10 SYNGENTA BIOTECHNOLOGY, INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SANTA CLARA

13 GREG LeFEBVRE and DANISCO US  
14 INC.,

15 Plaintiff,

16 v.

17 SYNGENTA BIOTECHNOLOGY, INC.,

18 Defendant.

Case No. 108-CV-111703

**NOTICE OF REMOVAL TO FEDERAL  
COURT BY DEFENDANT SYNGENTA  
BIOTECHNOLOGY, INC.**

19 TO THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
20 COUNTY OF SANTA CLARA, PLAINTIFFS GREG LeFEBVRE AND DANISCO US INC.  
21 AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that on May 30, 2008, Defendant Syngenta Biotechnology, Inc.  
23 filed a Notice of Removal of this action in the United States District Court for the Northern  
24 District of California. A complete copy of the Notice of Removal is attached to this Notice, and  
25 is served and filed herewith.

26 DATED: May 30, 2008

FENWICK & WEST LLP

27 By: 

Kimberly I. Culp

Attorneys for Defendant

SYNGENTA BIOTECHNOLOGY, INC.

1285466

**CERTIFICATE OF SERVICE**

The undersigned declares that:

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to this action. My business address is 801 California Street, Mountain View, CA 94041.

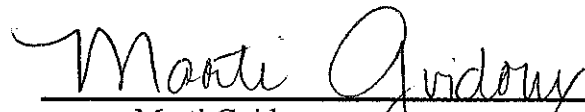
On the date set forth below, I served the attached NOTICE OF REMOVAL TO FEDERAL COURT BY DEFENDANT SYNGENTA BIOTECHNOLOGY, INC. on the party in the subject action by placing a true copy thereof as indicated below, addressed as follows:

James W. Morando, Esq.  
 Laura C. Roche, Esq.  
 Farella Braun & Martel LLP  
 235 Montgomery Street, 17th Floor  
 San Francisco, CA 94104

Jeffrey S. Boxer, Esq.  
 Emily Milligan, Esq.  
 Carter Ledyard & Milburn LLP  
 Two Wall Street  
 New York, NY 10005

- ☒ **U.S. MAIL:** I am familiar with our business practices for collecting and processing of mail for the United States Postal Service. Mail placed by me within the office for collection for the United States Postal Service would normally be deposited with the United States Postal Services that day in the ordinary course of business. The envelope(s) bearing the address(es) above was sealed and placed for collection and mailing on the date below following our ordinary business practices.
- ☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand on the office(s) of the addressee(s).
- ☐ **BY FEDERAL EXPRESS:** I caused such envelope(s) to be delivered to Federal Express for overnight courier service to the office(s) of the addressee(s).
- ☐ **BY ELECTRONIC MAIL:** I caused such document(s) to be delivered by electronic mail to the addressee(s).
- ☐ **BY FACSIMILE:** I caused a copy of such document(s) to be sent via facsimile transmission to the office(s) of the party(s) stated above and was transmitted without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 30, 2008 at Mountain View, California.

  
 Marti Guidoux

1285466

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained therein neither replace nor supplement the filing and service of process or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

Greg LeFebvre and Danisco US Inc.

**DEFENDANTS**

Syngenta Biotechnology, Inc.

(b) County of Residence of First Listed Plaintiff Santa Clara, California  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Durham County, North Carolina  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

James W. Morando, Esq. (CSB No. 087896)  
Farella Braun & Martel LLP  
235 Montgomery Street, 17th Floor  
San Francisco, CA 94104 (415) 954-4400

Attorneys (If Known)

Rodger R. Cole, Esq. (CSB No. 178865)  
Fenwick & West LLP  
801 California Street  
Mountain View, CA 94041 (650) 988-8500

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       | PTF                        | DEF   |                            |                                       | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|-----|-----|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State.    | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |     |     |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |     |     |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |     |     |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury — Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury — Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<b>LABOR</b>	<input type="checkbox"/> 861 HIA(1395ff)	<input type="checkbox"/> 810 Selective Service
<input checked="" type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
	<input type="checkbox"/> 441 Voting	<b>Habeas Corpus:</b>	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<b>REAL PROPERTY</b>	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 790 Other Labor Litigation	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 445 Amer. w/Disabilities—Employment	<input type="checkbox"/> 550 Civil Rights	<b>IMMIGRATION</b>		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 446 Amer. w/Disabilities—Other	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property			<input type="checkbox"/> 465 Other Immigration Actions		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. §§ 1332 and 1441

Brief description of cause:

Enforceability of contract

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)**

(PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND

☒ SAN JOSE

DATE

May 30, 2008

SIGNATURE OF ATTORNEY OF RECORD

*Kimberly I. Culp*

Kimberly I. Culp